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No. 75-402

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1975

TROY HONEYCUTT,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Petitioner, Troy Honeycutt, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit affirming his conviction under 18 U.S.C., Section 1623, for making a false material declaration before a federal grand jury.

OPINION BELOW

The opinion of the Court of Appeals is printed as an Appendix to this Petition.

JURISDICTION

The judgment of the Court of Appeals was entered on August 14, 1975. The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1).

QUESTIONS PRESENTED

Can a conviction stand on an indictment charging a witness with having made a false material declaration, where the declarant was forced to deliver money to armed men whose admitted motive was to obtain money feloniously from the declarant, and where the false declaration was alleged to be declarant's assertion that he did not "pay" such men the money, contending at trial that he regarded the transaction as a hold-up in which money was stolen from him?

Assuming that a witness can truthfully say that he did not "pay" a holdup man, does his statement that he did not "pay", constitute a false declaration merely because the armed men were police officers, charged with regulating the witness' tavern business, in the course of going about their other business of extorting money from the witness by threat?

NATURE OF THE CASE

Petitioner was convicted of making a false material declaration in denying before a federal grand jury that he "paid" money to Chicago police officers, in violation of 18 U.S.C. Section 1623.

STATEMENT OF FACTS

At successive grand jury appearances petitioner Honeycutt, a Chicago tavern keeper, denied that he "paid" money to Chicago police officers. (Tr. 54-62, 68-73).

At trial, policeman witness Frank Bychowski related that he had obtained money from tavern keeper Honeycutt, by telling him that he was of the impression that Honeycutt ". . . wanted to be a friend of ours . . ." and that he "assumed" that Honeycutt was willing to pay $50 per month, explaining to Honeycutt that he would still be liable for law violations in his tavern. (Tr. 82-85).

On cross examination Bychowski agreed that armed robbery entailed taking money from a victim when armed, and motivated by a felonious intent. He admitted that he had such an intent in getting Honeycutt's money, and that he was armed when he did so. (Tr. 95-104).

Honeycutt testified that in denying that he had "paid" money to the police, he did so considering his answers to be literally and technically true (Tr. 246-247); that he made a distinction between "payment" and handing money over in the course of a hold up (Tr. 230-231) and further considering that the money was not turned over for goods or services, proper or improper (Tr. 244-245).

REASONS FOR GRANTING THE WRIT

The United States Court of Appeals for the Seventh Circuit has so interpreted Section 1623 of Title 18 U.S. Code as to give it the meaning that an answer given under oath, which is not literally false, will nevertheless support a prosecution for making a false material declaration provided the declarant did not believe his assertion to be true when he made it.

In this case the Court of Appeals read into the false declaration statute, 18 U.S.C. Sec. 1623, the wording employed in 18 U.S.C. Sec. 1621, the perjury statute.

The latter statute (1621) defines an offense of willfully testifying to a matter which a witness does not then believe to be true. Prior to *Bronston* v. *United States,* 409 U.S. 352 (1973) a witness who testified truthfully, but who believed his answer to be false, could be convicted of perjury. (See, for example, *United States* v. *Lattimore,* 127 F. Supp. 405, 408, n.10 (D.D.C. 1955)). The thrust of the perjury statute was thus to punish a moral deviance in the witness. As we read *Bronston,* this Court held that regardless of the statutory language which seemed to compel that conclusion, perjury would not be punishable unless the statement were in fact false, regardless of evil intent in the witness.

Section 1623, Title 18 U.S. Code requires not only an intent to falsify, but actual falsification. Literal truth, however firmly the witness might believe himself to have lied, is a complete defense.

In its opinion, the Court of Appeals dwells upon the proposition that Honeycutt's "understanding" of the meaning of the word "paid" is determinative of the case. Thus the court held that "The jury must determine what

the defendant's understanding of the word 'pay' was, and *using that meaning,* decide whether his response was true or false." (App. 3, emphasis supplied). It makes no difference under the new section whether or not the witness intended to mislead or even to lie. If his answer is not literally false, then he may not be convicted.

It may be noteworthy that the court did not rely on cases brought under 18 U.S.C. Sec. 1623, but upon cases brought under the older perjury statute.

Regardless of the witness' "understanding" as to what his questioner means by the words he uses, the witness is bound and only bound, not to make literally false statements. It is not literally false to deny that one "paid" a stickup man. The officers who testified against petitioner were literally that. The fact that government gives such men immunity to testify against their victims (as it did here) or rewards their not-so-atypical misbehavior as public officials (as the town of Bayfield, Wisconsin did when it thereafter hired Bychowski as its Chief of Police) does not mean that stickup men are not stickup men. It only means that public office holders stand by each other through thick and thin. Probably on the theory that I will not treat you as a felon when you are discovered today, in the hope that you will not treat me as a felon when I am discovered tomorrow.

Bychowski & Co. were robbers, pure and simple. It is not improbable that Honeycutt knew exactly what the questioner meant by the use of the word "paid". "Paid" is after all, the word public officials would be *expected* to use when describing the process of loot gathering by other public officials. But honest citizens are not required to adopt the deceptive argot of uniformed robbers and their sympathizers in government.

The word 'pay'' and its cognates describes a set of special relationships. Had the government ever asked Honeycutt if the officers ''obtained'' money from him, his denial would plainly have been false. But the relationship was not appropriate to the use of ''pay.'' One does not ''pay'' the man who holds him up. One stands and delivers. Among the dictionary synonyms for ''pay'' is not to be found a word that is appropriate to transfers of currency by theft. Whether or not the prosecution and the Court of Appeals wish to limit the words descriptive of violent felony to felons either permanently or temporarily out of office, each has now taken a bold step in that direction.

A favorite way for an office holder to obtain money dishonestly is by accepting a bribe. A bribe is said to be ''paid.'' Had Honeycutt stated he had ''paid'' the officers, he would inferentially have conceded that he bribed them. But there was no evidence whatever that the money he handed over performed the function of a bribe. Indeed, he was told that he would be subject to criminal prosecution for any violation of law he might commit. Yet the government, which makes some claim to protecting the citizenry, insists that a citizen, wrongfully compelled to hand over money to a public official, should confess to criminal complicity with that official at the hazard of the official's proclaiming the citizen's complicity, himself under a grant of immunity thoughtfully supplied by another official.

Something has gone very wrong in the law enforcement business, when a self proclaimed rapist can procure his asserted victim's conviction for the crime of denying under oath that she was raped.

That is the precise posture of this case.

CONCLUSION

For the foregoing reasons we pray the Court will deem this case worthy of review, to the end that the conviction herein may be reversed.

Respectfully submitted,

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